No. 46069-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

KATRINA MARIE BOWEN,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

---

Respondent's Brief

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

By: _____
LUKE STANTON, WSBA No. 46942
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office
345 W. Main Street, 2nd Floor
Chehalis, WA 98532-1900
(360) 740-1240

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C. Is it proper for Bowen to raise for the first time on appeal the sentencing court's imposition of legal financial obligations?

II. STATEMENT OF THE CASE

In 2012 and 2013, Katrina Bowen (Bowen) worked at the "Flying K" store and gas station in Toledo, Washington. RP 7 (1/29/14). Her duties included selling lottery tickets. RP 7 (1/29/14). She began taking and scratching the tickets herself, hoping to find winning tickets. RP 7 (1/29/14). She reimbursed Flying K for only some of the tickets she took. RP 6-7 (1/29/14).

The state charged Bowen with Theft in the First Degree over a date range of January 1, 2012 to September 30, 2013. CP 1. The Amended Information alleged that Bowen "did wrongfully obtain or exert unauthorized control over more than five thousand dollars ($5,000) in lawful money of the United States of America belonging to another, to-wit: Flying K, with intent to deprive..." CP 1. The Amended Information also included a special allegation that "the current offense was a major economic offense..." CP 1-2.

Bowen entered a guilty plea and acknowledged that the offense qualified as a major economic offense. Statement of Defendant on Plea of Guilty, Supp. CP; RP 8, 10 (1/29/14). In Bowen's plea form, she indicated that "Between 1/1/12 and 9/30/13 in Lewis County I knowingly took property of another (lottery tickets) unlawfully—without paying for the tickets, with the intent to deprive the owner." Statement of Defendant on Plea of Guilty, p. 8, Supp. CP.

At the plea hearing, the sentencing court asked Bowen what she'd done that made her guilty of the offense. Bowen told the sentencing court:

> "I scratched tickets while I worked. I thought I was keeping track of them, pay for all of them, and I guess I wasn't, and I scratched about 500 per shift." RP 6-7 (1/29/14).

Bowen also acknowledged her written account of the offense, and agreed with the sentencing court's summary. RP 7 (1/29/14). Bowen did not directly acknowledge that she'd stolen $5,000, either in her written plea statement or in her colloquy with the sentencing court. Statement of Defendant on Plea of Guilty, p. 8, Supp CP; RP 3-10 (1/29/14). At the Sentencing hearing, Bowen's Attorney acknowledged that there was a factual basis for the allegation of $5,000.00 in stolen property, "I can picture it in my

mind sitting there at the counter working an evening shift and scratching tickets, and I can see how in your mind you wouldn't think I'm stealing money. We don't dispute ultimately that's what it turns out as being, because those tickets as the Court can see from the one sheet --the single sheet of discovery that was provided by the Lovells, they indicated almost $21,000 in tickets that they were short. We don't have a dispute with that. But I can also see sitting there scratching tickets, scratching tickets, scratching tickets over and over and over and over, not realizing that this is building up to be quite a large amount of money over $20,000 worth. RP 9-10 (3/26/2014).

The victim's provided a Victim's Statement in which they indicated their total losses due to Bowen's actions were around $147,000. CP 4-7.

Bowen had no prior convictions. RP 3 (3/26/14); CP 10. Her standard range was 0-90 days. CP 10. At sentencing, the prosecutor recommended an exceptional sentence of two years. RP 6 (3/26/14). Defense Counsel asked the court to impose a first-time offender sentence of 90 days. RP 13 (3/26/14).

The sentencing court imposed an exceptional sentence of 48 months in prison. CP 12. At Bowen's plea hearing, the sentencing court engaged Bowen in a discussion as follows:

> COURT: Paragraph 11 says, "Between 1-1-12 and 9-30-13, in Lewis County, I knowingly took property of another (lottery tickets) unlawfully without paying for the tickets, with the intent to deprive the owner." So you were working for the victim and you were selling lottery tickets as part of your job responsibilities and you were taking lottery tickets that were not being sold to you and you were scratching them off I assume looking for winners; is that correct?
>
> BOWEN: Yes.
>
> COURT: And you weren't reimbursing the business you were working for, when you took the tickets; is that right?
>
> MR. BLAIR: Not for all of them, your Honor.
>
> COURT: Okay, so the allegation is also that there's aggravating circumstances, this being a major economic offense. There are four possibilities under that aggravator: Number 1, the current offense involves multiple victims or multiple incidents per victim. With the exception of the one victim, who was the employer, that would not be seem to be applicable. Current offense involves attempted loss greater than typical for the offense. That one would be applicable. Current offense involves a high degree of sophistication or planning or occurred over a lengthy period of time. Again, with the exception it appeared over a year and eight months, that would not seem to be applicable. Lastly, the defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense. That appears to be applicable as well. So it appears to me that two of the four aggravators would be applicable. Ms. Bowen, are you acknowledging that?
>
> BOWEN: Yes.

> COURT: The two of the four aggravators under the aggravating circumstance major economic offense, RCW 9.94. A 535 sub-section 3 D are applicable?
>
> BOWEN: Yes, sir.

RP 7-8 (1/29/2014).

Although the judgment and sentence recited that the court had "considered the defendant's present and future ability to pay legal financial obligations," the court did not enter a finding on that issue. CP 11. The court found Bowen indigent at the inception of the case and appointed counsel to represent her. Order Appointing Attorney, Supp CP. The court also entered an Order of Indigency at the conclusion of the case. CP 19.

At sentencing, defense counsel noted that Bowen had lost her job with Flying K upon being discovered; she'd lost a second job after pleading guilty. RP 8 (3/26/14).

Although the court did not impose a fine, it did order Bowen to pay $600 in attorney fees. CP 13.

Bowen timely appeals her sentence. CP 18.

III. ARGUMENT

A. BOWEN'S GUILTY PLEA WAS MADE KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY.

1. Standard Of Review.

An alleged constitutional violation is reviewed de novo. *In re Det. of Strand*, 167 Wn.2d 180, 186, 217 P.3d 1159 (2009).

2. Taken In Whole, Bowen's Written Plea Form, Oral Acknowledgements, And The Representations Made By Counsel At Her Sentencing Indicate She Stole More Than $ 5,000.

Bowen entered her guilty plea with a complete understanding of the charges against her, her rights, and the facts to which she was admitting to. RP 2-7 (1/29/2014); Supp. CP 31-32. Upon review of the record, including the documents presented at the change of plea hearing it is clear there was a factual basis for Bowen's guilty plea. The trial court made the specific finding at the time of entry of plea that the grounds listed above, "The Court finds the defendant is competent to knowingly, intelligently, freely and voluntarily enter the plea. The plea is made on the advice of counsel with full knowledge of the consequences and awareness of rights. There's a factual basis for the plea. There's also as we have outlined in our discussion a factual basis for at least two prongs of the aggravator alleged by the State, possibly three as alluded to by

Mr. Eisenberg, but subsection two and four of the major economic offense aggravator in the Amended Information. I will accept the plea and I will find that the defendant is in fact guilty of Theft in the First Degree with the aggravating circumstance of this being a major economic offense as alleged in the Amended Information." RP 12 (1/29/2014).

Guilty pleas may only be accepted by the trial court after a determination of the voluntariness of the plea made. CrR 4.2(d). Due process requires that a defendant in a criminal matter must understand the nature of the charge or charges against him or her and may only enter a plea to the charge(s) voluntarily and knowingly. *State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011) (citations omitted). The court rule requires a plea be "made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). Prior to acceptance of a guilty plea, "[a] defendant must be informed of all the direct consequences of his plea." *State v. A.N.J.*, 168 Wn.2d 91, 113-14, 225 P.3d 956 (2010) (citations and internal quotations omitted). A plea cannot be considered voluntary if there is an insufficient factual basis for the plea. *In re Pers. Restraint of Evans*,

31 Wn. App. 330, 331, 641 P.2d 722 (1982), cert. denied, 459 U.S. 852 (1982).

Bowen argues that her plea was not knowing and voluntary because neither Bowen nor the sentencing court established an acceptable factual basis for the guilty plea. Brief of Respondent 6-8. Bowen rests this argument on what she believes is an insufficient statement regarding the dollar amount required by the statute. *See* RCW 9A.56.020(1)(a); RCW 9A.56.030(1)(a). Brief of Appellant 6-8. The State respectfully disagrees with Bowen's evaluation of the evidence provided to establish the factual basis and argues to this Court that there was a factual basis for the guilty plea and therefore the plea was made knowingly and voluntary. RP (1/29/2014); RP (3/26/2014).

In order for a sentencing court to accept a guilty plea it must comply with the requirements of CrR 4.2(d). The rule requires a plea to be competently and voluntarily made and the defendant must have an understanding of the consequences of the plea and the nature of the charge or charges. CrR 4.2(d). The trial court is also required to ensure there is a factual basis for the plea. CrR 4.2(d). A guilty plea cannot truly be voluntary if the defendant does not "possess an understanding of law in relation to the facts." *State*

v. S.M., 100 Wn. App. 401, 414, 996 P.2d 111 (2000), citing *In re Keene*, 95 Wn.2d 203, 209, 622 P.2d 360 (1981) (other internal and external quotations omitted). This requires a judge to determine if the conduct admitted to by the defendant constitutes the charged crime in the information. *Id.* (quotations and citations omitted). The requirement is necessary because it "protects a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." *Id.* (quotations and citations omitted).

When the trial court determines there is a factual basis for the guilty plea it is not required to be convinced of the defendant's guilt beyond a reasonable doubt. *State v. Saas*, 118 Wn.2d 37, 43, 820 P.2d 505 (1991) (citation omitted). The trial court must conclude that there is "sufficient evidence for a jury to conclude that the defendant is guilty." *Id.* In determining the factual basis for a guilty plea "the trial court may consider any reliable source of information in the record for determining whether sufficient evidence exists to support the plea." *Id.* When there is insufficient evidence to support the plea the proper remedy is to vacate the

plea and dismissal of the charges. *State v. R.L.D.*, 132 Wn. App. 699, 706, 133 P.3d 505 (2006).

The State had to prove Bowen stole the dollar amount required by the statute. *See* RCW 9A.56.020(1)(a); RCW 9A.56.030(1)(a). CP 14 and 24.

In the present case the record before the trial court at the time of Bowen's guilty plea included her Statement of Defendant on Plea of Guilty, the Stipulation and the colloquy between the sentencing court, Bowen and her attorney. RP 7 (1/29/14); RP 7-8 (3/29/2014). First it would appear that the plea was entered on January 29, 2014 to an Amended Information alleging the major economic offense language. CP 14. Bowen acknowledged the aggravators on the record and pled as charged. RP 7-8 (1/29/2014). Bowen admitted to the judge that she had done what she was charged with, i.e., that she had stolen more than $5,000. *Id.* at 6. Bowen further explained that she was stealing as many as 500 lottery tickets per shift over a 20-month period. *Id.* at 7. Furthermore, Bowen acknowledged that the second factor of the major economic crime aggravator—a loss greater than typical for the offense—"definitely applied." *Id.* at 7-8, 10. In short, it was clear

to everyone in the courtroom that the monetary element of Theft in the First Degree was met.

There was sufficient evidence for the judge to find that Bowen committed a major economic crime as alleged. It is clear from the colloquy that Bowen understood what charges she was pleading to as alleged in the information and she was pleading guilty understanding she had stolen more than $5,000 worth of scratch lottery tickets. While the specific dollar amount is not mentioned during the actual colloquy, the record is clear that the sentencing court had it in its possession at the time of sentencing a Victim's Statement which indicated the total amount lost was around $147,000. CP 20; CP 4-7; RP 2 (3/26/2014). In addition, Bowen's counsel acknowledged the loss was greater than $5,000 on behalf of his client numerous times. "I can picture it in my mind sitting there at the counter working an evening shift and scratching tickets, and I can see how in your mind you wouldn't think I'm stealing money. We don't dispute ultimately that's what it turns out as being, because those tickets as the Court can see from the one sheet--the single sheet of discovery that was provided by the Lovells, they indicated almost $21,000 in tickets that they were short. We don't have a dispute with that. But I can also see sitting

there scratching tickets, scratching tickets, scratching tickets over and over and over and over, not realizing that this is building up to be quite a large amount of money over $20,000 worth." RP 9-10 (3/26/2014).

There was a sufficient factual basis for Bowen's guilty plea and her conviction should be affirmed.

B. THE TRIAL COURT PROPERLY IMPOSED AN EXCEPTIONAL SENTENCE.

1. Standard Of Review.

The Washington Supreme Court has applied a three-step analysis in reviewing an exceptional sentence. Under RCW 9.94A.210(4) [recodified as RCW 9.94A.585 in 2001], an appellate court is to analyze the appropriateness of an exceptional sentence by addressing the following three questions under the indicated standards of review: (1) Are the reasons supported by the evidence in the record? The standard of review is "clearly erroneous." *State v. Nordby*, 106 Wn.2d 514,517-518, 723 P.2d 1117 (1986). (2) Do the reasons justify a departure from the standard range? The standard of review is a "matter of law." *State v. Zatkovich*, 113 Wn. App. 70, 52 P.3d 36 (2002). (3) Is the sentence clearly excessive? The standard of review is "abuse of discretion." *State v. Oxborrow*, 106 Wn.2d, 525, 532, 723 P.2d 1123 (1986). Illegal or erroneous

sentences may be challenged for the first time on appeal. *State v. Ross*, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004) (citations omitted). The remedy for an erroneous sentence is remand for resentencing. *Id.* "Fundamental principles of due process prohibit a criminal defendant from being sentenced on the basis of information which is false, lacks a minimum indicia of reliability or is unsupported in the record." *State v. Ford*, 137 Wn.2d 472, 481, 973 P.2d 452 (1999) (citations omitted). Therefore, the specific remedy asked for in Appellant's brief is not the appropriate remedy even if this Court were to find that the exceptional sentence was incorrectly imposed.

The Sixth Amendment of the United States Constitution guarantees individuals the right to trial by jury. The Sixth Amendment is violated when a trial court imposes an exceptional sentence based upon facts not found by a jury beyond a reasonable doubt absent those facts being stipulated to by the defendant. *In re Beito*, 167 Wn.2d 497, 503, 220 P.3d 489 (2009). Here, such facts were stipulated to by Bowen. There are aggravating factors that need not be proven to a jury beyond a reasonable doubt that allow a judge to impose an exceptional sentence. RCW 9.94A.535(2). The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury

under the following circumstances: (a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act. RCW 9.94A.535(2).

2. The Trial Court Properly Imposed An Exceptional Sentence Of 48 Months As The Trial Court Listed Two Findings Of Fact Which Each Independently Justify The Exceptional Sentence.

The sentencing Court listed two findings of fact which each independently justify the exceptional sentence. Supp. CP 34. Findings of Facts and Conclusions of Law. CP 31-32. Therefore, this Court should affirm Bowen's sentence because any one of the grounds it listed, considered individually, would be sufficient to impose an exceptional sentence.

Furthermore, Bowen orally acknowledged to the sentencing Court as to the specific findings necessary for an exceptional sentence.

> COURT: Paragraph 11 says, "Between 1-1-12 and 9-30-13, in Lewis County, I knowingly took property of another (lottery tickets) unlawfully without paying for the tickets, with the intent to deprive the owner." So you were working for the victim and you were selling lottery tickets as part of your job responsibilities and you were taking lottery tickets that were

not being sold to you and you were scratching them off I assume looking for winners; is that correct?

BOWEN: Yes.

COURT: And you weren't reimbursing the business you were working for, when you took the tickets; is that right?

MR. BLAIR: Not for all of them, your Honor.

COURT: Okay, so the allegation is also that there's aggravating circumstances, this being a major economic offense. There are four possibilities under that aggravator: Number 1, the current offense involves multiple victims or multiple incidents per victim. With the exception of the one victim, who was the employer, that would not be seem to be applicable. Current offense involves attempted loss greater than typical for the offense. That one would be applicable. Current offense involves a high degree of sophistication or planning or occurred over a lengthy period of time. Again, with the exception it appeared over a year and eight months, that would not seem to be applicable. Lastly, the defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense. That appears to be applicable as well. So it appears to me that two of the four aggravators would be applicable. Ms. Bowen, are you acknowledging that?

BOWEN: Yes.

COURT: The two of the four aggravators under the aggravating circumstance major economic offense, RCW 9.94. A 535 sub-section 3 D are applicable?

BOWEN: Yes, sir.

RP 7-8 (1/29/2014).

At Bowen's entry of plea hearing the sentencing court inquired as follows:

> COURT: My concern, and the reason I asked you for your comment is that I don't have anything in writing acknowledging the aggravator. I do have an oral admission. Is that sufficient for the State's proof?
>
> MR. EISENBERG: I believe it is, because the plea forms specifically indicates they are pleading to an Amended Information and the only change between the original and the amended was the insertion of this aggravator. Also, the oral record will make it abundantly clear that Ms. Bowen did knowingly stipulate that aggravator applies at least in part.
>
> COURT: You agree we that, Mr. Blair?
>
> MR. BLAIR: Yes. And I had actually talked to the prosecutor before we got started and what I told him is two and four definitely apply. I think legally you only need one or they only need one but two and four apply.
>
> COURT: That's my view. It may very well be that one is applicable as well, but I alluded to that when I said it wouldn't apply as except to the one victim the store owner itself, but two and four are definitely applicable under the circumstances. You are acknowledging that, correct, Ms. Bowen?
>
> BOWEN: Yes

RP 9-10 (1/29/2014).

The Sentencing Court made the specific finding at the time of entry of plea:

> The Court finds the defendant is competent to knowingly, intelligently, freely and voluntarily entering the plea. The plea is made on the advice of counsel with full knowledge of the consequences and

> awareness of rights. There's a factual basis for the plea. There's also as we have outlined in our discussion a factual basis for at least two prongs of the aggravator alleged by the State, possibly three as alluded to my Mr. Eisenberg, but subsection two and four of the major economic offense aggravator in the Amended Information. I will accept the plea and I will find that the defendant is in fact guilty of Theft in the First Degree with the aggravating circumstance of this being a major economic offense as alleged in the Amended Information." RP 12 (1/29/2014).

The grounds for the exceptional sentence were properly found and acknowledged by Ms. Bowen. Therefore, the trial court properly imposed an exceptional sentence of 48 months.

The sentence was not clearly excessive under the "abuse of discretion" standard of review. *State v. Oxborrow*, 106 Wn. 2d, 525, 532, 723 P.2d 1123 (1986).

> "Under the circumstances, given the fact that the plea here was a plea to Theft in the First Degree, given the amount of money that was taken and given the aggravating circumstances, this being a major economic offense, I don't believe that to treat Bowen as a first time offender is equitable, I don't think it is appropriate, and I don't think that it would send the proper message. Under the circumstances, I think a sentence in excess of what is presently the standard range, which -- and the standard range is determined by the legislature, not by the Court. When the legislature passed the SRA, they took a lot of discretion, if not 100 percent of the discretion that Superior Courts ordinarily had away, and they now vest it in the Sentencing Guidelines, which are a product of the legislature. It more than a little irks me, when I see a situation, where somebody is sentenced in the State of Washington and politicians -- well, the

> court didn't do this, the court didn't do that. Well, the courts do what they can, but the legislature is responsible for the fiasco that is the Sentencing Reform Act in its present form in the State of Washington, not the courts. Under the circumstances, it will be the judgment of the Court that the defendant, Katrina Bowen, will be sentenced to the Department of Corrections for a term of 4 years..." RP 21-22 (3/26/2014).

The Sentencing Court's decision can be understood as meeting the purposes of subsection (1) and (2) of the Sentencing Reform Act under RCW 9.94A.010. While the court used language about sending a message that should be understood in conjunction with its written Findings of Fact and Conclusions of Law as fulfilling the statute's purpose of promoting respect for the law by providing punishment which is just. *See* CP 31-32. In addition, it is obvious that the Sentencing Court felt that a major economic crime had occurred and the proportionality of the sentence was to appropriate given its language concerning the equity of giving Bowen first time offender treatment. RP 21 (3/26/2014).

C. BOWEN CANNOT RAISE FOR THE FIRST TIME ON APPEAL THE SENTENCING COURT'S IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS BECAUSE IT IS NOT A MANIFEST CONSTITUTIONAL ERROR.

Bowen argues, for the first time on appeal, that the sentencing court impermissibly assessed the cost of attorney fees without proper findings of her ability to pay. Brief of Appellant 36-

40. The alleged error is not a manifest constitutional error and therefore, Bowen cannot raise this issue for the first time on appeal.

1. Standard Of Review.

A claim of a manifest constitutional error is reviewed de novo. *State v. Edwards*, 169 Wn. App. 561, 566, 280 P.3d 1152 (2012).

The Washington State Supreme Court determined that the imposition of legal financial obligations alone is not enough to implicate constitutional concerns. *State v. Curry*, 118 Wn.2d 911, 917 n.3, 829 P.2d 166 (1992). A defendant's failure to object at his sentencing hearing to the court's finding that the defendant has the current or likely future ability to pay legal financial obligations can preclude appellate review of the sufficiency of the evidence that supports the finding. *State v. Blazina*, 171 Wn. App. 906, 911, 301 P.3d 492 (2013). Appellant cannot point to any authority from within Washington State for the proposition that the imposition of Legal Financial Obligations impermissibly chills a defendant's right to counsel.

2. Bowen Did Not Object To The Imposition Of Attorney Fees And Cannot Raise The Issue For The First Time On Appeal Because The Alleged Error Is Not A Manifest Constitutional Error.

There was no objection to the imposition of legal financial obligations at the sentencing hearing. RP 184-87. A timely objection would have made the clearest record on this question. Therefore, the absence of an objection is good cause to refuse to review this question. RAP 2.5(a) (the appellate court may refuse to review any claim of error not raised in the trial court); *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) (RAP 2.5(a) reflects a policy encouraging the efficient use of judicial resources and discouraging a late claim that could have been corrected with a timely objection); *State v. Danis*, 64 Wn. App. 814, 822, 826 P.2d 1015, review denied, 119 Wn.2d 1015, 833 P.2d 1389 (1992) (refusing to hear challenge to the restitution order when the defendant objected to the restitution amount for the first time on appeal).

The sentencing court did not make an affirmative finding that Bowen had the present or future ability to pay. CP 6. The boiler plate language of the judgment and sentence does state:

> The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's

> financial resources and the likelihood that the defendant's status will change. CP 6.

Below this statement are two potential check boxes, neither of which is checked. CP 6. While there was not an oral ruling regarding the above statement, it does not mean that the sentencing court did not consider the items listed based upon its knowledge of the defendant and her reason for indigence. Bowen was 37 years old when she was sentenced to 48 months. CP 4 and 7. There is nothing in the record that would support Bowen's inability in the future to make payments on her legal financial obligations.

Moreover, even though the affirmative finding was not made in this case, because the determination that the defendant either has or will have the ability to pay during initial imposition of court costs at sentencing is clearly somewhat "speculative," the time to examine a defendant's ability to pay is when the government seeks to collect the obligation. *State v. Crook,* 146 Wn. App. 24, 27, 189 P.3d 811, review denied, 165 Wn.2d 1044, 205 P.3d 133 (2008); *State v. Smits*, 152 Wn. App. 514, 523-24, 216 P.3d 1097 (2009). Another reason to refuse to review the issue at this time is that the superior courts often keeps the financial declaration (reviewed at the time public counsel is appointed) under seal and not accessible

to the prosecutor. This type of documentation, as stated above, could have been what the sentencing court considered in this case.

The State notes that an appellant making this claim should provide a fair review of the record, i.e. the transcript of the hearing at which public counsel is appointed (at which time the court inquired into a defendant's employment and assets) and the financial declaration form, if any. Bowen's first appearance was July 16, 2012 at which time counsel was appointed. Supp. CP PA. This hearing has not been transcribed.

The alleged error is not of constitutional magnitude. Even, if this Court finds the error alleged by Bowen is an error of constitutional magnitude, the error is not manifest because there is not a sufficient record for this Court to review the merits of the alleged error. *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009); *State v. McFarland*, 127 Wn.2d 31, 33, 896 P.2d 1245 (2009). Under RAP 2.5(a). Bowen cannot raise the imposition of legal financial obligations for the first time on appeal and this Court should affirm the sentencing court's imposition of legal financial obligations.

IV. CONCLUSION

For the reasons stated above, Bowen's sentence for Theft in the First Degree should be affirmed.

RESPECTFULLY submitted this 25th day of September, 2014.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

by: _____
LUKE STANTON, WSBA 46942
Attorney for Plaintiff

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent, vs. KATRINA MARIE BOWEN, Appellant.	No. 46069-6-II DECLARATION OF SERVICE

Ms. Teri Bryant, paralegal for Luke Stanton, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On September 25, 2014, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Jodi Backlund, attorney for appellant, at the following email address: backlundmistry@gmail.com.

DATED this 25th day of September, 2014, at Chehalis, Washington.

Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

September 25, 2014 - 10:17 AM

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